

Barry W. Davidson
DAVIDSON ♦ MEDEIROS
1280 Bank of America Center
601 West Riverside Avenue
Spokane, Washington 99201
(509) 624-4600

John J. Jolley, Jr.
KUTAK ROCK LLP
The Omaha Building
1650 Farnam Street
Omaha, Nebraska 68102
(402) 346-6000

Counsel for Metropolitan Mortgage &
Securities Co., Inc. and the
Metropolitan Creditors' Trust

Counsel for Summit Securities, Inc.
and the Summit Creditors' Trust

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

**METROPOLITAN MORTGAGE &
SECURITIES CO., INC.,**

Debtor.

In re. . .

SUMMIT SECURITIES, INC.,

Debtor.

Jointly Administered Under:
No. **04-00757-W11**
Chapter **11**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE: ORDER
AUTHORIZING SALE OF TRUST
RECEIVABLES FREE AND CLEAR OF
LIENS, APPROVING TRUST
RECEIVABLES PURCHASE
AGREEMENT, AND GRANTING
RELATED RELIEF**

(SSC SETTLEMENTS LLC)

THIS MATTER having come on regularly for hearing upon the Motion filed February 28, 2007 (*Docket No. 12846*) (the "Motion"), of the Metropolitan Creditors' Trust ("Metropolitan") and the Summit Creditors' Trust ("Summit") by and through their respective counsel, for an Order Authorizing Sale Of Trust Receivables Free And Clear Of Liens, Approving Trust Receivables Purchase Agreement, And Granting Related Relief (the "Sale Order"), authorizing and

1 approving the sale by Metropolitan and Summit (the "Trusts¹" or the "Sellers") to
2 SSC Settlements, LLC (the "Purchaser") of certain portfolios of receivables,
3 payments relating thereto, and related assets held in trust and distributed or to
4 be distributed to the Sellers, including, without limitation, the Select Assets Fund
5 1998-1 Zero Coupon Assets Backed Certificates (the "Trust Certificates") issued
6 by the Select Assets Fund 1998-1 ("Select," or the "Issuer") pursuant to the Trust
7 Agreement dated November 1, 1998, as amended from time to time (the "Trust
8 Agreement") between Select Assets Funding Corporation (the "Depositor") and
9 Wilmington Trust Company, as owner trustee under the Trust Agreement (the
10 "Owner Trustee"), with such sale to be in accordance with the terms and
11 conditions of the Trust Receivables Purchase Agreement (the "Purchase
12 Agreement") in the form attached to the Motion as Exhibit A, providing for the
13 sale of the assets, properties, rights, contracts, and claims collectively referred to
14 as the "Trust Portfolio Property" to the Purchaser free and clear of liens, claims,
15 and encumbrances, as expressly set forth in the Purchase Agreement, and the
16 granting of certain related relief; and the Court having reviewed the Motion, and
17 having considered the statements of counsel, and adequate and sufficient notice
18
19
20
21
22

23 ¹ Capitalized terms not otherwise defined herein shall have the same meaning set forth in the
24 Trust Receivables Purchase Agreement. Certain of the terms of the Trust Receivables Purchase
25 Agreement are summarized herein. Reference is made to the Trust Receivables Purchase
Agreement for a complete recitation of the terms of the proposed transaction. In the event of
conflict between the terms as summarized herein and the actual terms of the Trust Receivables
Purchase Agreement, the Trust Receivables Purchase Agreement will control.

1 of the Motion, the Purchase Agreement, and all transactions contemplated
2 thereunder and in the order (the "Sale Order"), having been given to those parties
3 in interest entitled to receive notice pursuant to the Standing Order Limiting
4 Notice In Jointly Administered Case entered herein on February 6, 2004 (the
5 "Standing Order"); and all interested parties having been afforded an opportunity
6 to be heard with respect to the Motion and all relief requested therein; and the
7 Court having determined that the legal and factual bases set forth in the Motion
8 and supporting pleadings establish just cause for the relief granted herein; and
9 the Court making the findings of fact and conclusions of law set forth hereafter
10 pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant
11 to Bankruptcy Rule 9014, with findings of fact to be construed as conclusions of
12 law and conclusions of law to be construed as findings of fact when appropriate,
13 and all capitalized terms not otherwise defined herein shall have the meanings
14 given such terms in the Motion or Purchase Agreement, as the case may be.
15
16
17

18 NOW THEREFORE, the Court making the following Findings of Fact:

19 1. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157
20 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
21 Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§
22 1408 and 1409.
23
24
25

1 2. The statutory predicates for the relief sought in the Motion are
2 sections 105(a), 363, and 1146(c) of the Bankruptcy Code and Bankruptcy Rules
3 2002 and 6004.
4

5 3. On February 4, 2004 (the "Petition Date"), Metropolitan Mortgage &
6 Securities Co., Inc. and Summit Securities, Inc. filed their respective petitions for
7 relief pursuant to chapter 11 of the Bankruptcy Code.
8

9 4. An Order Confirming The Third Amended Joint Reorganization Plan
10 Of Metropolitan Mortgage & Securities Co., Inc. And Summit Securities, Inc. was
11 entered on February 13, 2006, confirming the Third Amended Joint Plan of
12 Reorganization (the "Plan"). Pursuant to the Plan, the Metropolitan Creditors'
13 Trust and the Summit Creditors' Trust were created to fulfill the rights and
14 obligations set forth pursuant to the Plan and the Trust Agreements by which
15 they were created, including the duty to use all commercially reasonable efforts to
16 liquidate, sell or otherwise dispose of, as the case may be, all of the Metropolitan
17 Creditors' Trust Assets and the Summit Creditors' Trust Assets as soon as
18 reasonably possible, subject always to the Plan Administrator's obligation to take
19 all actions in her capacity as the Plan Administrator in a manner consistent with
20 the best interests of the Beneficiaries, with the powers conferred upon her under
21 the Trust Agreements and the Plan and in accordance with the terms and
22 provisions of the Trust Agreements and the Plan.
23
24
25

1 5. As evidenced by the Certificate of Service filed with this Court: (i) due,
2 proper, timely, adequate, and sufficient notice of the Motion, the proposed Sale,
3 and all transactions contemplated thereby (including, without limitation, the
4 assumption and assignment of certain executory contracts), has been provided in
5 accordance with Bankruptcy Code sections 102(1), 105(a), 363, and 1112(b) and
6 Bankruptcy Rules 2002 and 6004 and in compliance with the Purchase
7 Agreement; (ii) such notice was good, sufficient, and appropriate under the
8 circumstances; and (iii) no other or further notice of the Motion, the proposed
9 Sale, or the transactions contemplated thereby is or shall be required.
10

11
12 6. A reasonable opportunity to object and be heard with respect to the
13 Motion and the relief requested therein has been afforded to all persons and
14 entities set forth by the Standing Order, and as required by the Purchase
15 Agreement, including the Claimants, the Annuity Providers, and the Obligors.
16

17 7. As of December 1, 2006, the Sellers and the Purchaser executed the
18 Purchase Agreement providing, among other things, for the sale of Portfolio
19 Property. As of the date hereof, and before the sale contemplated by the Purchase
20 Agreement, Metropolitan and/or Summit own the Portfolio Property. Regardless
21 of which Trust owns the Portfolio Property, the sale thereof, as provided herein
22 and in the Purchase Agreement, is a valid and binding sale of such property.
23
24
25

1 8. The estimated sale price of the Receivables to be sold by the
2 Metropolitan Trust Portfolio is \$3,984,505.58, and the estimated sale price of the
3 Receivables to be sold by the Summit Trust Portfolio is \$2,830,245.68.
4

5 9. On February 28, 2007, the Trusts filed the Motion with a copy of the
6 Purchase Agreement (*Docket No. 12846*).

7 10. The Trusts have determined that the Purchaser's offer contained in
8 the Purchase Agreement presents the best opportunity to realize the highest value
9 for the Portfolio Property. The consideration provided by the Purchaser pursuant
10 to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best
11 offer for the Portfolio Property, and (iii) constitutes reasonably equivalent value
12 and fair consideration under the Bankruptcy Code and under the laws of the
13 United States, any state, territory, possession, or the District of Columbia.
14
15

16 11. The Purchase Agreement was not entered into for the purpose of
17 hindering, delaying, or defrauding creditors under the Bankruptcy Code and
18 under the laws of the United States, any state, territory, possession, or the
19 District of Columbia.
20

21 12. The Purchaser is not an "insider" of either of the Trusts, as that term
22 is defined in Bankruptcy Code section 101. Neither the Trusts nor the Purchaser
23 have engaged in any conduct that would cause or permit the Purchase Agreement
24 to be avoided under Bankruptcy Code section 363(n). The Trusts have disclosed
25

1 that Bill Twitty, former Vice President for Alternative Cash Flows at Metropolitan,
2 and a recognized expert in this asset area, is assisting the Purchaser with this
3 purchase. As Vice President, Mr. Twitty was familiar with the assets to be sold
4 hereunder, and all history associated with their acquisition.
5

6 13. The Purchase Agreement and all of the transactions related thereto
7 were negotiated and have been and are undertaken by the Sellers, the Purchaser,
8 and their respective counsel and advisors at arm's length, without collusion and
9 in good faith within the meaning of section 363(m) of the Bankruptcy Code. As a
10 result of the foregoing, the Sellers and the Purchaser are entitled to the
11 protections of section 363(m) of the Bankruptcy Code.
12

13 14. Exigent circumstances and sound business reasons exist for the sale
14 of Portfolio Property pursuant to the Purchase Agreement. Entry into the
15 Purchase Agreement and consummation of the transactions contemplated
16 thereby constitute the exercise by the Trusts of sound business judgment, and
17 are in the best interests of the Trusts and their creditors. The Trusts have
18 articulated good and sufficient business reasons justifying the sale of Portfolio
19 Property pursuant to section 363 of the Bankruptcy Code. Such business
20 reasons include, but are not limited to, the fact that: (i) the Purchase Price
21 constitutes the highest or best offer for the Portfolio Property; (ii) the Purchase
22 Agreement and the Closing thereof will present the best opportunity to realize the
23
24
25

1 value of the Trusts on a going concern basis and avoid decline and devaluation of
2 the Portfolio Property, and (iii) the Purchase Agreement and the Closing thereof
3 will ensure an orderly transfer of the assets from the Trusts to the Purchaser.
4

5 15. The Trusts have full corporate power and authority to execute the
6 Purchase Agreement and all other documents contemplated thereby, and the sale
7 of Portfolio Property has been duly and validly authorized by all necessary
8 corporate power and authority necessary to consummate the transactions
9 contemplated by the Purchase Agreement. No consents or approvals, other than
10 those expressly set forth in the Purchase Agreement (which include entry of the
11 Order and Supplemental Court Orders), are required for the Trusts to
12 consummate such transactions.
13

14 16. The consideration to be realized by the Trusts pursuant to the
15 Purchase Agreement is fair and constitutes reasonably equivalent value for the
16 Portfolio Property proposed to be sold thereunder. The Purchase Price is fair and
17 reasonable and is sufficient value for the Portfolio Property.
18

19 17. Except as provided in the Purchase Agreement, a sale of Portfolio
20 Property other than one free and clear of the applicable liens, claims, and
21 encumbrances would impact materially and adversely the Trusts, and would yield
22 substantially less value for the Trusts, with less certainty than the available
23 alternatives, and the alternatives would, therefore, be of substantially less benefit
24
25

1 to the Trusts. In reaching this determination, the Court has taken into account
2 the consideration to be realized directly by the Trusts, the indirect benefits of
3 such sale in terms of the Purchaser's assumption of liabilities, and the relative
4 challenges associated with an orderly transfer of title of the Portfolio Property to a
5 third party purchaser. Therefore, the sale of Portfolio Property as contemplated in
6 the Purchase Agreement is in the best interests of the Trusts, creditors, and other
7 parties in interest.
8

9
10 18. The Seller may sell Portfolio Property free and clear of all liens
11 because each entity with a security interest in any Portfolio Property to be
12 transferred on the Closing Date, if any: (i) has consented to the Proposed Sale or
13 is deemed to have consented to the Proposed Sale; (ii) could be compelled in a
14 legal or equitable proceeding to accept money satisfaction of such lien; or
15 (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code,
16 and therefore, in each case, one or more of the standards set forth in section
17 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of liens
18 who did not object, or who withdrew their objections, to the Motion are deemed to
19 have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those
20 holders of liens who did object are adequately protected by having their liens, if
21 any, attach to the cash proceeds of the Proposed Sale ultimately attributable to
22 the property against or in which they claim a lien, subject to the terms hereof.
23
24
25

1 WHEREFORE, having entered the foregoing Findings of Fact, the Court
2 hereby makes the Conclusions Of Law set forth hereafter. To the extent any of
3 the following conclusions of law constitute findings of fact, they are adopted as
4 such.
5

6 1. All requirements of section 363(b) and (f) of the Bankruptcy Code and
7 any other applicable law relating to the sale of Portfolio Property have been
8 satisfied. Those parties asserting liens on, or other interests in, Portfolio Property
9 who did not object to the Motion, or who have withdrawn their objections, are
10 deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.
11

12 2. The transaction reflected in the Purchase Agreement represents the
13 highest or best offer received by the Sellers for Portfolio Property. The Trusts
14 have been authorized under section 363 of the Bankruptcy Code to determine in
15 their business judgment the highest or best offer, taking into account all relevant
16 factors. This determination was made in good faith, in a fair manner, without the
17 presence of fraud.
18

19 3. The transactions contemplated by the Purchase Agreement have been
20 bargained for and are undertaken at arm's length, without collusion, and in good
21 faith as that term is used in section 363(m) of the Bankruptcy Code. The
22 Purchaser and the Sellers have not engaged in any conduct that would cause or
23 permit the Purchase Agreement to be avoided pursuant to section 363(n) of the
24
25

1 Bankruptcy Code. In the absence of a stay pending appeal, if the Purchaser
2 consummates the Purchase Agreement at any time after entry of the Sale Order,
3 the Purchaser shall be entitled to the protections of section 363(m) of the
4 Bankruptcy Code if the Sale Order or any authorization contained herein is
5 reversed or modified on appeal.
6

7 4. The transfer of Portfolio Property: (a) represents or will represent a
8 legal, valid, and effective transfer of Portfolio Property; (b) vests or will vest the
9 Purchaser with all right, title, and interest (including common law right) of the
10 Trusts in and to the Portfolio Property; and (c) constitutes a transfer for
11 reasonably equivalent value and fair consideration under the Bankruptcy Code
12 and applicable state law fraudulent conveyance or fraudulent transfer laws.
13

14 5. The transactions contemplated by the Purchase Agreement are
15 determined to be under or in furtherance of a plan of reorganization or liquidation
16 to be confirmed under section 1129 of the Bankruptcy Code in that the net
17 proceeds of the sale of Portfolio Property are essential and required to fund a
18 chapter 11 plan for the Trusts, and therefore, the transfer of Portfolio Property to
19 the Purchaser and the related transactions are exempt under section 1146(c) of
20 the Bankruptcy Code from any stamp or similar tax in all necessary jurisdictions
21 related to the sale and transfer of Portfolio Property to the Purchaser.
22
23
24
25

1 6. All provisions of the Sale Order are nonseverable and mutually
2 dependent.
3

4
5 Presented by:

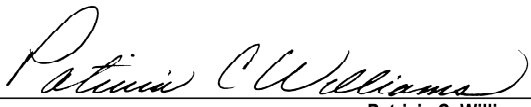
6 DAVIDSON ❖ MEDEIROS

7 /s/ Barry W. Davidson
8 Barry W. Davidson, WSBA No. 07908
9 Attorney for Metropolitan Mortgage
10 & Securities Co., Inc. and the
11 Metropolitan Creditors' Trust

12 KUTAK ROCK LLP

13 /s/ John J. Jolley, Jr.
14 John J. Jolley, Jr., NE Bar # 20726
15 Attorney for Summit Securities, Inc.
16 and the Summit Creditors' Trust
17
18
19
20
21
22
23
24
25




Patricia C. Williams
Bankruptcy Judge

08/06/2007 01:59:59 PM

Page 12

Findings of Fact and Conclusions of Law Re: Order Authorizing
Sale of Trust Receivables Free and Clear of Liens, Approving Trust
Receivables Purchase Agreement, and Granting Related Relief

Metropolitan Mortgage \ Pleadings.cpr

DAVIDSON ❖ MEDEIROS

ATTORNEYS AT LAW

A PROFESSIONAL SERVICE CORPORATION

1280 BANK OF AMERICA CENTER

601 WEST RIVERSIDE AVENUE

SPOKANE, WASHINGTON 99201

FACSIMILE: (509) 623-1660

(509) 624-4600